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6
7 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

8 Kirby Spencer,

9 Plaintiff,

10 vs.

11 American Express Company, A Foreign Domestic
12 Corporation.

13 Defendant.

) **CASE NO.:**

) **COMPLAINT FOR DAMAGES FOR**
) **VIOLATION OF THE TELEPHONE**
) **CONSUMER PROTECTION ACT,**
) **47 U.S.C. § 227 ET. SEQ.**

) **JURY TRIAL DEMANDED**

14
15 **COMPLAINT**

16 COMES NOW the Kirby Spencer (Client) ("Plaintiff"), by and through his attorney, Craig
17 K. Perry, Esq. of the law firm of Craig K. Perry & Associates, brings this action to secure redress
18 from unlawful phone and/or texting collection practices against American Express ("Amex").

19 **INTRODUCTION**

20 1. The Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. prohibits the use of
21 predictive dialers to call cellular telephones. There exists an affirmative defense of "prior express
22 consent," which is available only in circumstances where the autodialed calls concern a specific subject
23 matter for which the call recipient provided his number to the caller.
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JURISDICTION AND VENUE

1 2. Jurisdiction of this Court arises pursuant to 47 U.S.C § 227(g)(2), 28 U.S.C. §§
2 1331 and 1337 grants this court original jurisdiction of all civil actions arising under the laws of
3 the United States.

4 3. American Express Company is a corporation organized and existing pursuant to the
5 laws of the State of New York which is primarily engaged in the business of providing charge and
6 credit payment card products and travel-related services worldwide. Its registered agent is CT
7 Corporation System, 111 Eighth Avenue, New York, NY 10011.

8 4. Venue in this District is proper pursuant to 47 U.S.C § 227(e)(6)(E)(i), which
9 incorporates by reference 28 U.S.C § 1391, of which the following subsections apply: (b)(2),
10 because a substantial part of the events giving rise to the claim arose in Nevada, and (c)(1),
11 because Plaintiff is a resident of the state of Nevada, and because a substantial portion of the
12 events that led to the cause occurred within this district.

PARTIES

13 5. Plaintiff is a natural person residing in Henderson, Nevada.

14 6. Plaintiff is both a “person” and “called party” as those terms are used or defined in
15 47 U.S.C § 227.

16 7. A principal purpose of AMEX’s business is the collection of debts.

17 8. AMEX is properly referred to as both a “person” and a “caller” as those terms are
18 used or defined in 47 U.S.C § 227.

STATEMENT OF FACTS

19 9. Plaintiff repeats, re-alleges, and incorporates by reference paragraphs 1 through 8
20 inclusive, above.

21 10. Beginning on or about November 6, 2014, and through February 2, 2015, AMEX
22 contacted or attempted to contact the Plaintiff’s paging service, cellular telephone service,
23 specialized mobile radio service, radio common carrier service, or any service for which the
24 called party is charged for the call-using a facsimile transmission, text messages, automatic
25 telephone dialing system, artificial or prerecorded voice. Total calls or texts came to 45 (forty-
26 five)
27
28

1 11. AMEX did not have the prior express consent of the Plaintiff before making the
2 calls described in paragraph 10 above.

3 12. On the date these texts began, 11-05-2014, Spencer contacted Amex at the phone
4 number listed on the text, 800-528-8000, and advised them this was a new phone number and to
5 stop sending texts. The person with whom Spencer spoke was named "Jeff." Jeff advised Spencer
6 that there was "nothing he could do to stop the texts."

7 13. Spencer called Amex again on 12-26-2014 and again contacted Jeff and asked them
8 to stop sending the texts. Again, Spencer was told by an Amex representative that they could not
9 stop the texts from being sent. Nevertheless, the rep gave Spencer a fax number and mailing
10 address to contact the company. Accordingly, Spencer contacted them via fax at 623-444-3000
11 and certified mail at P.O. Bx 981535, El Paso TX 79998. These were done on December 27,
12 2014.

13 14. The texting or calls did not cease until February 2, 2015.

14 15. Each text message was sent from the short code 692639, which belongs to Amex.

15 **CLAIM FOR RELIEF**

16 **DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT**

17 16. Plaintiff repeats, re-alleges, and incorporates by reference paragraphs 1 through 15
18 inclusive, above.

19 17. Section 227(b)(3)(A) of the TCPA authorizes a private cause of action for a person
20 or entity to bring in an appropriate court of that state "an action based on a violation of this
21 subsection or the regulations prescribed under this subsection to enjoin such violation."

22 18. Section 227(b)(3)(B), of the Act authorizes a private cause of action for a person or
23 entity to bring in an appropriate court of that state "an action to recover for actual monetary loss
24 from such a violation, or to receive \$500 in damages for each such violation, whichever is
25 greater."

26 19. Despite the fact that Plaintiff never consented to AMEX making calls to his cellular
27 telephone, AMEX repeatedly placed non-emergency calls to Plaintiff's cellular telephone without
28 Plaintiff's consent.

20. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations when they are done "willfully and knowingly."

21. Here, upon information and belief, AMEX repeatedly and regularly placed non-emergency, automated calls to Plaintiff's cellular telephone.

22. AMEX did not have Plaintiff's express consent prior to contacting him on his cellular telephone using an automatic telephone dialing system or pre-recorded or artificial voice.

23. AMEX's conduct violated § 227(b)(1)(A)(iii) of the TCPA by making any call by way of SMS text messaging using any automatic telephone dialing system or an artificial prerecorded voice to a telephone number assigned to a cellular telephone service.

WHEREFORE, Plaintiff, Kirby Spencer (Client), respectfully prays for a judgment as follows:

- a. Actual damages;
- b. Statutory damages up to \$1,500 per violation;
- c. Reasonable attorney's fees and costs; and
- d. Any other relief deemed appropriate by this Honorable Court.

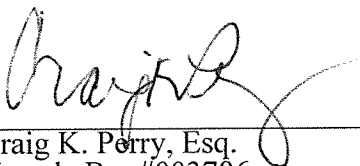
DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, Kirby Spencer (Client), demands a trial by jury in this case.

Dated this 31st day of October 2017.

RESPECTFULLY SUBMITTED,

CRAIG K. PERRY & ASSOCIATES



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